

REMARKS / ARGUMENTS

The present application includes pending claims 1-25, all of which have been rejected under 35 U.S.C. § 103(a). The Applicant respectfully submits that the original claims define patentable subject matter and request reconsideration in view of the following remarks.

I. Examiner's "Response to Arguments"

The Examiner states the following in the Final Office Action:

The Examiner emphasizes for the record that the claims employ a broader in scope than the Applicant's disclosure in all aspects. In addition, the Applicant has not argued any narrower interpretation of the claim limitations, nor amended the claims significantly enough to construe a narrower meaning to the limitations.

...

Therefore, the failure to significantly narrow definition or scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims in parallel to the Applicant in the response and reiterates the need for the Applicant to distinctly define the claimed invention.

See the Final Office Action at pages 3-4 and 5. The Applicant respectfully disagrees and points out that Applicant's claims are sufficiently distinguishable over both Romero and Garnett. For example, **neither Romero nor Garnett disclose any use of capacity utilization information. In addition, neither Romero nor Garnett disclose any use of capacity utilization information that**

is embedded in the spare link bandwidth from a plurality of blade servers.

As these are very specific claim limitations, which the Examiner has failed to find support for in the references, the Applicant submits that there is no need for any claim amendments.

The Examiner is referred to MPEP 2142, which states that the prior art references must teach all of the Applicant's claim limitations in order to support a §103 rejection. Since neither Romero nor Garnett disclose any use of capacity utilization information that is embedded in the spare link bandwidth from a plurality of blade servers, the Applicant is puzzled as to why the Examiner has repeatedly stated that the Applicant should significantly amend the claims and "distinctly define" the invention. The Examiner is urged to re-read the specification, including the figures and the claims, as the Applicant's invention is distinctly defined and no further amendments are required.

In the "Response to Arguments" section of the Final Office Action as well as in the main argument, the Examiner has provided extensive description of what a "blade server" is. The Examiner has also inferred that load balancing is a feature that is known in the art and is widely associated with blade servers and, somehow, a server management module is "configured to perform central management functions for the entire cluster of blade servers." See the Final Office Action at pages 4-5 and 8-9.

While the Applicant appreciates the information on blade servers, the Applicant fails to see its relevance. As already stated above, the Applicant has pointed out to very specific features recited in Applicant's claims, which are not supported by either Romero or Garnett (the Examiner is referred to a more detailed discussion as to the deficiencies of Romero and Garnett below). With regard to the suggestion that load balancing is known in the art and widely associated with blade servers, the Applicant will point out that the Examiner's own and thorough search of the prior art has demonstrated the contrary. Namely, the Examiner has conceded that the Romero reference does not disclose blade server load balancing functions. **The Applicant would like to reiterate that the issue is not whether or not Romero or Garnett discloses blade server load balancing functions. Rather, the issue is how blade server load balancing is performed. Applicant's claims 1 and 13 are very specific and disclose that load balancing uses capacity utilization data that is embedded in spare link bandwidth. Again, the Examiner is reminded that at least this specific feature is not present in any of the references.**

REJECTION UNDER 35 U.S.C. § 103

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure ("MPEP") states the following:

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the teaching. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

See MPEP at § 2142, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added). Further, MPEP § 2143.01 states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art suggests the desirability of the combination," and that "although a prior art device 'may be capable of being modified to run the way the apparatus is claimed, there must be a *suggestion or motivation in the reference to do so*'" (citing *In re Mills*, 916 F.2d 680, 16 USPQ 2d 1430 (Fed. Cir. 1990)). Moreover, MPEP § 2143.01 also states that the level of ordinary skill in the art cannot be relied upon to provide the suggestion..., citing *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ 2d 1161 (Fed. Cir. 1999). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness.

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

II. The Proposed Combination of Romero and Garnett Does Not Render Claims 1-25 Unpatentable

The Applicant turns to the rejection of claims 1-25 under 35 U.S.C. § 103(a) as being unpatentable over Romero in view of Garnett.

A. Independent Claims 1 and 13

With regard to the rejection of independent claim 13 under 103(a), the Applicant submits that the combination of Romero and Garnett does not disclose or suggest at least the limitations of “wherein said blade server manager allocates data received from said external network to each blade server **based on embedded capacity utilization data** transmitted by each blade server to the blade server manager **that is embedded in spare link bandwidth** on said interface between the blade server manager and each of said blade servers,” as recited by the Applicant in independent claim 13 (emphasis added).

With respect to claims 13-15 and 23, the Examiner concedes that “Romero does not expressly disclose the capability to perform blade server load balancing functions.” See the Final Office Action at page 8. The Examiner then seeks support in Garnett and states the following:

In the same field of endeavor, Garnett et al. (US#7,032,037) provide a server blade comprising at least one processor and at least one communications port. The communications port may be operable to receive an information message and

the processor may be operable to compare the received information message to a predetermined set of possible destinations to select a destination. The communications port may be further operable to transmit the information message to the selected destination. The server blade can be configured as a field replaceable unit. This arrangement provides a load balancer module configured to take the place of a standard server blade within a modular computer system to provide a load balancing service to that modular computer system (See Figs. 1 & 15; Col. 2, lines 5 plus)

See the Final Office Action at page 8. The Applicant points out that Garnett provides a modular computer system with integral load balancing service. See Garnett at col. 1, lines 63-65. Garnett also discloses a load balancer module configured to take the place of a standard server blade within a modular computer system to provide a load balancing service to that modular computer system. See *id.* at col. 2, lines 8-11. However Garnett, including FIGS. 1 and 15 and col. 2, lines 5 plus), does not disclose or suggest any use of capacity utilization information. In fact, Garnett also does not disclose or suggest any use of capacity utilization information that is embedded in the spare link bandwidth from a plurality of blade servers. The Applicant also points out for the record that the Examiner has not identified where Garnett (or Romoero) discloses the use of capacity utilization information that is embedded in the spare link bandwidth between a blade server and a blade server manager.

With regard to the “information message” stated in the Examiner’s argument above, the Applicant points out that Garnett only discloses that the

information message is used by the processor to compare the message to a predetermined set of possible destinations to select a destination. Again, there is no further disclosure in Garnett that the “information message” reads on capacity utilization information that is embedded in the spare link bandwidth.

Romero does not overcome the deficiencies of Garnett. Therefore, the Applicant maintains that the combination of Romero and Garnett does not disclose or suggest at least the limitations of “wherein said blade server manager allocates data received from said external network to each blade server based on embedded capacity utilization data transmitted by each blade server to the blade server manager that is embedded in spare link bandwidth on said interface between the blade server manager and each of said blade servers,” as recited by the Applicant in independent claim 13. Accordingly, the Applicant submits that the combination of Romero and Garnett does not establish a prima facie obviousness rejection to independent claim 13 and the Applicant respectfully request that the rejection of independent claim 13 under 35 USC 103(a) be withdrawn. Claim 1 is similar in many respects to the system of claim 13. Therefore, the Applicant submits that claim 1 is allowable at least based on the above reasons. Furthermore, the Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of claims 1 and 13 should such a need arise.

B. Dependent Claims 2-12 and 14-25

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1 and 13 under 35 U.S.C. § 103(a) as being anticipated by Romero in view of Garnett has been overcome and request that the rejection be withdrawn. Additionally, claims 2-12 and 14-25 depend from independent claims 1 and 13, respectively, and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 2-12 and 14-25.

CONCLUSION

Based on at least the foregoing, the Applicant believes that all claims 1-25 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8176.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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